

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,

Plaintiff,

-v-

CHAD F. WOLF, *in his official capacity as Acting
Secretary of Homeland Security*, et al.,

Defendants.

20-CV-1127 (JMF)

R. L'HEUREUX LEWIS-MCCOY et al., *on behalf of
themselves and all similarly situated individuals*,

Plaintiffs,

-v-

CHAD WOLF, *in his official capacity as Acting
Secretary of Homeland Security*, et al.,

Defendants.

20-CV-1142 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

On July 29, 2020, the Court ordered Defendants to “file a comprehensive and detailed report that,” among other things, “[l]ists *any and all* inaccurate or misleading statements or representations in the record.” ECF No. 92.¹ The Court later extended the deadline to submit this report to September 4, 2020 “[t]o ensure that the Government’s report is comprehensive and accurate.” ECF No. 103.

On September 4, 2020, Defendants filed a letter-motion “to request a protective order pursuant to Federal Rule of Civil Procedure 5.2(e), permitting the Government to redact privileged portions of its report and CBP’s declarations on their public filing while submitting an unredacted report to the Court for its *ex parte* review.” ECF No. 111, at 1. That same day, Defendants filed both unredacted and redacted versions of the report and declarations called for by the Court’s order of July 29. *See* ECF Nos. 112, 113. Defendants invoke the attorney-client

¹ Unless otherwise noted, all docket references are to 20-CV-1127.

privilege, law-enforcement privilege, deliberative-process privilege, and work-product privilege as the bases for the redactions in their letter-motion but — by their own admission — fail to specify which asserted privilege applies to which redaction(s), let alone show with specificity why the redactions are justified. *See* ECF No. 111. This is insufficient to sustain a claim or privilege or to overcome the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006).


No later than **September 21, 2020**, Defendants shall identify with specificity the grounds upon which they assert privilege for each proposed redaction in their report and declarations. Defendants shall also address whether, insofar as the Court did not order them to submit allegedly privileged documents in connection with the report, disclosure of the unredacted documents to the Court constitutes waiver of any or all of the privileges asserted. Plaintiffs shall file a response no later than **September 28, 2020**.

If the Court orders any portions of the report unredacted, the Court will give Plaintiffs an opportunity to supplement their response filed on September 11, 2020. *See* ECF No. 115.

Finally, upon reflection, the Court concludes that any fee application by Plaintiffs should be deferred until resolution of the foregoing matters and whether any further inquiry is warranted. Accordingly, **the deadlines for filing a fees motion are ADJOURNED sine die**.

SO ORDERED.

Dated: September 14, 2020
New York, New York



JESSE M. FURMAN
United States District Judge